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Communication No. 2102/2011

Views adopted by the Committee at its 110th session (10–28 March 2014)

Submitted by:	Kalevi Paadar, Eero Paadar and his family, Veijo Paadar, and Kari Alatorvinen and his family (represented by counsel Johanna Ojala)
Alleged victims:	The authors
State party:	Finland
Date of communication:	22 September 2011 (initial submission)
Document reference:	Special Rapporteur's rule 97 decision, transmitted to the State party on 23 September 2011 (not issued in document form)
Date of adoption of Views:	26 March 2014
Subject matter:	Forced slaughter of the authors' reindeer
Procedural issues:	None
Substantive issues:	Unfair trial, right to equality and non-discrimination, right of indigenous peoples to enjoy their own culture
Articles of the Covenant:	14 (1); 26; 27
Article of the Optional Protocol:	None

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Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (110th session)

concerning

Communication No. 2102/2011*

Submitted by:	Kalevi Paadar, Eero Paadar and his family, Veijo Paadar, and Kari Alatorvinen and his family (represented by counsel Johanna Ojala)
Alleged victim:	The authors
State party:	Finland
Date of communication:	22 September 2011 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 26 March 2014,

Having concluded its consideration of communication No. 2102/2011, submitted to the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The authors of the communication are Kalevi Paadar, Eero Paadar and his family (his wife Taimi Jetremoff and his three minor children Hannu, Marko and Petri Paadar), Veijo Paadar, and Kari Alatorvinen and his family (his wife Paula Alatorvinen, and his four children, Johanna, born on 13 December 1986; Jennika, born on 22 June 1988; Joonas, born on 21 March 1991; and Juuli Alatorvinen, born on 13 March 2001). All of them except Kari Alatorvinen are indigenous Sami. Mr. Alatorvinen's wife and children are also Sami. The authors allege a violation by Finland of article 14, paragraph 1; article 26; and article 27

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Christine Chanet, Ahmad Amin Fathalla, Cornelis Flinterman, Yuji Iwasawa, Walter Kälin, Zonke Zanele Majodina, Gerald L. Neuman, Sir Nigel Rodley, Víctor Manuel Rodríguez Rescia, Fabián Omar Salvioli, Anja Seibert-Fohr, Yuval Shany, Margo Waterval and Andrei Paul Zlătescu.
The text of an individual opinion by Committee members Walter Kälin, Víctor Manuel Rodríguez Rescia, Anja Seibert-Fohr and Yuval Shany is appended to the present Views.

read alone and in conjunction with article 1, of the Covenant. The authors are represented. The Optional Protocol entered into force for the State party on 23 March 1976.

1.2 On 23 September 2011, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party to refrain from any further forced slaughtering of the authors' reindeer while their case was under consideration by the Committee. On 23 March 2012, the State party indicated that it had complied with that request.

The facts as submitted by the authors

2.1 The authors are full-time reindeer herders. They live in the village of Nellim and belong to the Ivalo Reindeer Herding Cooperative ("the Cooperative"), which is divided into two herding groups, one in the north around the village of Nellim and one in the south around the village of Ivalo. The Nellim herding group and Nellim village form a distinct Sami community within the broader area of the Cooperative. The Nellim herding group is made up almost exclusively of Sami and retains traditional methods of herding that are constitutive of the Sami culture. The four authors and their families are the only remaining families whose income is based primarily on reindeer herding. The remaining herders in the Nellim group own smaller numbers of reindeer and do not earn their primary income from herding.

2.2 Reindeer herding is made difficult in the Nellim area by the winter conditions and different pastures, as compared to those of the Ivalo group. In addition to dissimilarities with regard to pastures, predators and snow conditions, the reindeer husbandry of the two groups differs in that the authors' reindeer herding is based solely on the utilization of natural pastures. Whereas the Ivalo group provides its reindeer with significant amounts of feed, the authors give hay to their reindeer in winter only to guide them, and to make them move to pastures of lichen and stay there. Reindeer feeding is not a part of Sami herding, which is based on free pasturage.

2.3 The Cooperative is a public law entity. It is not a private association established freely by its members; nor is it a traditional and voluntary reindeer herding unit established by the indigenous Sami people who used to herd reindeer in natural communities, such as a family or a village. The cooperative system was imposed through legislation in the 1930s and is currently regulated by the Reindeer Husbandry Act ("the Act"), which came into force in 1990.

2.4 The majority of the Cooperative's herders belong to the Ivalo group. The Nellim group has fewer reindeer and is in the minority as far as decision-making is concerned. The Nellim group has unsuccessfully tried to separate itself from the Cooperative to form its own. According to the authors, disagreements within the Cooperative are the result of State interference in Sami reindeer herding via the creation of artificially large units to administer reindeer herding, instead of leaving it to the Sami themselves to determine the kind of natural communities that are the most suitable for their herding. Traditional Sami reindeer husbandry is based on small herding groups comprised of natural communities that have their own traditional pastures.

2.5 Under section 21 of the Act, the Ministry of Agriculture and Forestry determines, for periods of 10 years at a time, the maximum number of live reindeer that a cooperative may keep on its territory and the maximum number of such reindeer that a shareholder of a cooperative may own. When determining the maximum number of live reindeer that a cooperative may keep, the Ministry must ensure that the number of reindeer grazing on the cooperative's territory during the winter season does not exceed the sustainable production capacity of the cooperative's winter pasture.

2.6 Under section 22 (1) of the Act, if the number of live reindeer of a cooperative or a reindeer owner exceeds the maximum number referred to in section 21, the cooperative must, in the course of the following herding year, decide on reducing the number of reindeer to the maximum allowable number. Under section 22 (2), on special grounds, a cooperative may decide that the number of reindeer belonging to a shareholder will not be reduced, in which case equivalent reductions will be carried out among the other owners in proportion to their number of reindeer. According to section 22 (3), if it becomes clear that reindeer numbers in the following herding year would exceed the maximum allowable number, the cooperative may decide that the number of reindeer must be reduced during the current herding year. The cooperative's decision can be enforced immediately, unless the Administrative Court decides otherwise as a result of a claim. According to section 22 (4), if the owner does not reduce the number of his or her reindeer in accordance with the decision of the cooperative, the chair of the cooperative may decide that the cooperative will carry out the reduction on behalf of the owner.

2.7 At the time of the facts, the highest allowable number of reindeer for the Ivalo cooperative was 6,000. The authors contend that this number had not been exceeded during the four years before 2011. In fact, the number had only been exceeded once during the past decade (in 2004/05).

2.8 According to the authors, for several years the Cooperative's slaughtering plans have been formulated in a way that, in practice, has led to the number of the authors' reindeer decreasing dramatically, much more so than for the Ivalo group. The reason for this is the model used by the Cooperative for reducing reindeer numbers. The model fails to take into account the fact that — in contrast with the practices of the Ivalo herding group — the nature-based herding methods of the Nellim group, which rely on free grazing in natural pastures, amount to an inbuilt control mechanism for the size of the herd. Calf losses are an integral part of traditional Sami herding methods.

2.9 Every year, a large proportion of the newborn calves belonging to the Nellim group disappear in the forest, owing to a range of different natural conditions and, in particular, their exposure to predators. At the time of the round-ups, which take place from October to January, between 30 and 50 per cent of the calves that have been born in spring go missing. In comparison, the calf losses of the Ivalo group are much smaller, because their reindeer are kept closer to human settlements, which reduces their exposure to predators. Furthermore, the herding area of the Nellim group is located in a wide and remote border area on Finnish, Norwegian and Russian territory. According to recent scientific studies, there is a dense population of bears in this area, which is the main reason for the heavy annual calf losses. Current legislation[1] forbids the killing or disturbing of bears and eagles, either entirely, or during the spring and summer, which is when most of the calf losses occur. The only lawful means of combating heavy calf losses would be to stop traditional free grazing on natural pastures and to introduce artificial extra feeding, which would not be economically feasible in Nellim and would amount to a forced change to traditional herding practices.

2.10 The imbalance in predation pressure is not taken into account when the slaughtering plan is decided upon by a majority in the Cooperative. The plan lays down a slaughtering percentage (usually 70 per cent or more), which is based on the number of adult reindeer that the owners had at the end of the previous herding year in May. As a result, the number of animals to be slaughtered is determined without taking into account the losses that have occurred in the intervening months. Even if around 90 per cent of the female adult reindeer

[1] The authors refer to the Nature Conservation Act and the Game Husbandry Act, which hinder control of the numbers of predators that prey on reindeer.

have given birth to a calf, up to 50 per cent of the calves are no longer alive at the time of the round-up. In calculating the number of reindeer to be slaughtered, the newborn calves are not taken into account, but they can nevertheless be used to fulfil the slaughter obligation. The Nellim herders, unlike the Ivalo group in the Cooperative, do not have enough calves to fulfil their slaughter quota. As a result, they are forced to kill their adult female reindeer, which they need as a productive base for their herding economy.[2]

2.11 In 2005, one of the authors, Kalevi Paadar, complained to Rovaniemi Administrative Court about the Cooperative's decision to decrease the number of reindeer in a way that would threaten his occupation and lifestyle as a Sami reindeer herder. His complaint was dismissed on 13 December 2005, as the Court considered the Cooperative's decision to be legally valid. Kalevi Paadar appealed the dismissal to the Supreme Administrative Court, which, on 10 April 2007, upheld the judgement of the Rovaniemi court.

2.12 In its spring meeting on 31 May 2007, the Cooperative approved the slaughter plan for the 2007/08 herding year. The plan imposed slaughter obligations on all shareholders in the same percentage, on the basis of the number of live reindeer held in the previous herding year. The reindeer not slaughtered in the 2006/07 herding year (the so- called backlog reindeer) were to be slaughtered first.

2.13 At its autumn meeting on 7 October 2007, the Cooperative decided, with regard to the backlog reindeer, that it would carry out the reductions on behalf of the owners. For the authors, this meant that all of their animals taken to the round-up would be slaughtered until the Cooperative's decisions on reducing reindeer numbers that had been taken in the previous years had been implemented. In addition, the authors were requested to slaughter a share corresponding to the current year's slaughter percentage. According to the authors, the total slaughter numbers demanded by the Cooperative exceeded the number of adult reindeer that they had at the end of the previous herding year. Even counting the likely number of calves (equivalent to 50 or 60 per cent of the number of adult female reindeer), the slaughter demands exceeded the total number of reindeer that the authors estimated they would have at the time of the round-ups.[3] Almost no animals would be left, and the authors would no longer be able to pursue reindeer husbandry since, according to the law, herders cannot buy new reindeer and continue herding once they have lost all their reindeer.

2.14 The Nellim case is not unique in the Sami areas of Lapland. There are other similar disputes between cooperatives and Sami groups belonging to them with regard to numbers of reindeer to be slaughtered. However, most of the Sami cooperatives in the State party apply slaughter systems that differ from the one used in Ivalo by the way in which they take calf loss into consideration. In those systems, different slaughter percentages apply to adult reindeer and to calves, and heavy calf loss is not punished by the additional killing of adult reindeer as it is under the Ivalo model. The fundamental problem with the Ivalo model is that the reindeer reduction is not carried out in proportion to the actual number of live reindeer found in the round-ups, but in proportion to a number which is severely distorted at the time of slaughter. The other models enable the owner to retain his or her proportionate share of the cooperative's total number of reindeer, regardless of the high number of missing calves.

[2] Reindeer herding in Finland is based mainly on calf slaughter, where only some of the young animals are left alive to compensate for the annual loss of adults.

[3] According to the figures provided by the authors, the total number of adult reindeer owned by the four families was 418 for the 2011/12 herding year; the predicted slaughter request for the 2011/12 herding year was estimated at 932. This is despite the fact that the authors' adult reindeer numbers had already decreased between 2003 and 2010.

2.15 The authors filed a complaint against the Cooperative's decision of 7 October 2007, with Rovaniemi Administrative Court, and requested interim protection measures. They claimed that setting the slaughter plan in the same way for all of the Cooperative's shareholders prevented the Sami from practising their livelihood and their culture and was therefore discriminatory against them. On 11 October 2007, the Court ordered the slaughter to be halted. By then, the Cooperative had already slaughtered part of the authors' herd. On 19 October 2007, the Administrative Court dismissed the case without examining the merits. The judgement made no reference to the authors' Sami origin or to the Covenant. On the same date, the authors filed an urgent request for interim measures with the Supreme Administrative Court, mentioning in their application that the slaughtering would continue the next day, which was a Saturday. As there was nobody who could look at the appeal during the weekend, the slaughter continued on 20 October 2007. However, on 23 October 2007, the Supreme Administrative Court ordered it to stop.

2.16 On 4 April 2008, the Supreme Administrative Court reversed the judgement of Rovaniemi Administrative Court and returned the case to it for retrial. In its judgement of 15 August 2008, Rovaniemi Administrative Court rejected the authors' claims. It considered that the shareholders were to be treated equally regardless of their ethnic background. Therefore, the Cooperative's decision of 7 October 2007 could not be considered discriminatory against the Sami people in the light of the Constitution and the international treaties binding upon the State party.

2.17 In September 2008, the authors appealed to the Supreme Administrative Court, arguing that implementation of the Cooperative's decision of 7 October 2007 would mean the end of their reindeer husbandry, as the forced slaughter would include their so-called capital reindeer, that is to say, the female reindeer. It would also mean the disappearance of the Nellim herd as an independent unit, as there would not be a sufficient number of herders or of reindeer left. The livelihood of the Sami in Nellim would therefore come to an end. These claims, uncontested by the Cooperative, were made with reference to, inter alia, article 27 of the Covenant.

2.18 The Court requested a statement from the Government concerning the implementation of section 22 of the Act and matters related to the position of the Sami as indigenous people. Statements were received from the Ministry of Agriculture and Forestry, the Ministry for Foreign Affairs, the Ministry of Justice, the Finnish Game and Fisheries Research Institute and the Reindeer Herders' Association.

2.19 On 2 February 2011, the Supreme Administrative Court upheld the judgement of Rovaniemi Administrative Court. The Court found that the effects of the Cooperative's decision "on the manner of implementation of reindeer slaughter for specific years are not such that they would constitute an infringement of operational conditions for livelihood and culture, even if the potential differences in the approaches to reindeer herding are taken into account. Further, in the matter, on the one hand general equality needs to be considered, i.e. equality among all reindeer owners, and on the other hand, the realization of equality among the Sami reindeer owners, in particular taking into account the premises for reindeer herding carried out in the traditional manner. In this respect, it has not been shown, taking into account the perspectives presented by both sides, that the reindeer herding cooperative would have superseded requirements concerning equality in deciding, inter alia, on the method of slaughter of the appellants' so-called backlog reindeer. On the above-mentioned grounds, the decision of the Ivalo Reindeer Herding Cooperative dated 7 October 2007 on the method of implementation for reduction of the number of reindeer is not contrary to … the Constitution of Finland or basic rights and liberties and human rights".

2.20 The Court's judgement is final and cannot be appealed against. Domestic remedies have therefore been exhausted. On 18 September 2011, the board of the Cooperative decided that the authors must slaughter all of their reindeer starting on 26 September 2011.

2.21 The authors add that, in recent years, two issues have caused tension between them and the other members of the Cooperative. One concerns the way that pastures have been divided between the two herding groups by a fence, leading to difficulties for the Nellim group in carrying out traditional Sami reindeer herding and arguably being one reason for the group's higher calf losses. The fence makes it impossible for the Nellim herd to move along their natural migration routes and return to their winter grazing grounds once summer is over. The fact that the Ivalo herding group has a majority vote in the Cooperative keeps the fence closed at that time of the year. The other issue concerns the forestry operations of the Finnish Forest Service. Traditional Sami reindeer herding depends on the natural forest and is adversely affected by forestry, which is why the Nellim group is opposed to logging and other forestry measures in its area. The Ivalo group is the only herding group within the Sami Homeland in Finland that practises extensive reindeer feeding and herds reindeer using non-Sami methods. As a result, this herding group is less vulnerable to forestry activities. The Ivalo group and, hence, the Ivalo cooperative, has been actively against actions by the Nellim group and other Sami herding cooperatives aimed at bringing about a reduction in forestry operations by the Forest Service.

2.22 In 2010, a lawsuit initiated by the Paadars against the Forest Service resulted in a settlement between the two parties whereby most of the remaining forests around Nellim were saved for the purpose of reindeer herding. However, if the Paadars lose their reindeer, the agreement will become void, since, under the terms of the agreement, the forests are exempt from forestry operations only so long as the Paadars or their relatives are reindeer herders.

The complaint

3.1 The authors allege that the State party violated article 14, paragraph 1, of the Covenant when the Supreme Administrative Court rejected the appeal without weighing the legal claims, arguments and facts of the case. Furthermore, by requesting a statement from the Government, the Court subordinated itself to the Executive, thus violating the authors' right to a fair trial.

3.2 The forced slaughtering of their reindeer entails violations of the authors' rights under article 27 of the Covenant to enjoy their own indigenous culture in community with other Sami. The authors and their families cannot continue their way of life after the slaughtering, because the families will no longer have any reindeer left. This will mean the end of the authors' and their families' Sami livelihood. When taking decisions, the Cooperative is obliged to take into consideration the preservation of the Sami culture, in accordance with section 17, subsection 3, of the Finnish Constitution, and article 27 of the Covenant.

3.3 The decision of the Ivalo Reindeer Herding Cooperative, a public law entity, to slaughter the authors' reindeer is discriminatory both in its purpose and its effects, in violation of article 26 of the Covenant. The authors have been targeted for disproportionate slaughtering of their reindeer because of their Sami way of herding, their Sami ethnicity and their fight against further logging by the Forestry Service on their traditional lands. Even if the discriminatory intent cannot be demonstrated through evidence admissible in court, the effect of the slaughtering would be discriminatory as it affects exclusively those members of the Cooperative who belong to the Sami indigenous people and use the traditional and culturally constitutive Sami herding methods.

3.4 The threat faced by the authors of having their reindeer slaughtered on account of a Reindeer Husbandry Act that does not recognize traditional Sami reindeer herding is the result of a lack of recognition of Sami land rights by the State party. In this respect, the authors recall the concluding observations on the fifth periodic report of Finland, in which the Committee indicated that "the State party should, in conjunction with the Sami people,

swiftly take decisive action to arrive at an appropriate solution to the land dispute with due regard for the need to preserve the Sami identity in accordance with article 27 of the Covenant" (CCPR/CO/82/FIN, para. 17). The authors also refer to the report of the Special Rapporteur on the rights of indigenous peoples, in which it is indicated that "Finland should step up its effort to clarify and legally protect Sami rights to land and resources. In particular, Finland should ensure special protections for Sami reindeer husbandry, given the centrality of this means of livelihood to the culture and heritage of the Sami people" (A/HRC/18/35/Add.2, para. 84).

3.5 The authors add that the Anar Sami language is under acute threat, as there are only 300 people who speak it. The survival of the language depends on communities in which the language is used in collective practices. Nellim is one of the most important villages for the language, and the reindeer husbandry of the Nellim herding group is an essential collective practice for Anar Sami language speakers. If the planned slaughters are carried out, the Nellim herding group and reindeer herding as a traditional Sami livelihood in Nellim village will cease to exist, as the village depends on reindeer husbandry and small-scale tourism for its survival. Accordingly, the future of the group and of the village as a whole — and therefore of the Anar Sami language — is under threat.

The State party's observations on admissibility and the merits

4.1 In its note verbale of 22 November 2011, the State party indicated that it had no objections concerning the admissibility of the present communication. On 23 March 2012, the State party submitted observations on the merits.

4.2 The State party refers to sections 21 and 22 of the Reindeer Husbandry Act. It also refers to the Government Bill for the Reindeer Husbandry Act (HE 244/1989), according to which circumstances and practices regarding reindeer herding differ from area to area. In mountain areas they are part of the Sami culture and have special local features. The Bill also indicates that reindeer herding as a whole involves so many features in common that it would not be appropriate to include different provisions for different areas in the Act, but rather only provisions that are applicable to all reindeer herding.

4.3 Under section 14 of the Game Animal Damages Act (105/2009), a new compensation system has been established whereby compensation should be paid for losses of reindeer calves, even if the remains are not found. The compensation is payable for the period between the calving and the last day of the next November. It is calculated for each cooperative on the basis of the producer price of reindeer meat, the estimated calving percentage in the herding area, the number of female reindeer in the territory of the cooperative and the estimated percentage of calf mortality caused by big wild animals in that territory. The compensation for other reindeer found killed is multiplied by 1.5. If the cooperative has suffered exceptionally severe losses, the amount of compensation is multiplied by 3.

4.4 Regarding the national proceedings in the present case, the Supreme Administrative Court, in its judgement of 11 February 2011, stated that the decision of the Cooperative to reduce the number of reindeer should be assessed from the standpoint of equality, among all reindeer owners on the one hand and among Sami owners on the other hand. Failure to respect the requirements of equality had not been substantiated. In the long term, compliance with section 21 of the Act should contribute to maintaining the opportunities for reindeer herding, which is part of Sami culture. Thus, the decision on forced slaughter taken by the Cooperative could not be considered to violate the Constitution or the Covenant.

4.5 Since the year 2000, the maximum permitted number of reindeer for the Ivalo cooperative has been 6,000 and the maximum permitted number for an individual owner

has been 500. According to the State party, these numbers are sufficient for carrying on traditional Sami reindeer herding.

4.6 In the 2004/05 herding year, the Cooperative had a total of 6,080 live reindeer. As a result, on 30 July 2005, it decided to adopt a slaughter plan for the 2005/06 herding year. Through the appeals filed by Kalevi Paadar, the conformity of the slaughter plan for the 2005/06 herding year with the requirements of the Act was confirmed by the judgement of the Supreme Administrative Court. On 31 May 2006, the Cooperative adopted a new slaughter plan. On 31 May 2007, the Cooperative issued a slaughter list that indicated each shareholder's so-called arrears (i.e. the reindeer not slaughtered earlier, as well as the so-called extras — the reindeer slaughtered earlier in excess of the slaughtering obligation). No complaints were made against these decisions.

4.7 On 7 October 2007, the Cooperative decided to enforce the decisions. The authors complained to Rovaniemi Administrative Court in regard to this latest decision. On 12 October 2007, the Court stayed the enforcement. However on 19 October 2007, the Court dismissed the case because the authors had not filed a complaint against the slaughter plan which was at the origin of the decision on forced slaughter and which had been approved in a meeting of the Cooperative.

4.8 It appears from both parties' pleadings to the Supreme Administrative Court that most herders in the Cooperative are Sami. Furthermore, according to the judgement of Rovaniemi Administrative Court, the Cooperative has calculated that at its meetings, native Sami people usually hold between 58 and 60 per cent of all voting rights, on average.

4.9 Following the authors' appeal, the Supreme Administrative Court issued, on 23 October 2007, an interim measure prohibiting the slaughtering. On 2 April 2008, it quashed the Rovaniemi court's judgement and referred the matter back to the Rovaniemi court for reconsideration. The Supreme Administrative Court held that the decision of 7 October 2007 could be complained against because it was the first decision on reindeer slaughter taken under section 22, subsection 4, of the Act.

4.10 Rovaniemi Administrative Court reconsidered the complaint but rejected it on 15 August 2008. It nevertheless upheld the prohibition on enforcement of the Cooperative's decision until a final decision was adopted on the case. The authors appealed this judgement to the Supreme Administrative Court, which rejected the appeal on 11 February 2011.

4.11 Reindeer herding cooperatives have been introduced as administrative units because they are needed for organizing the herding for different purposes, for example for agricultural aid and compensation for damage caused by big wild animals. The units are large because they are set up according to local reindeer herding needs. Most cooperatives have both Sami and non-Sami owners as shareholders. Due to the fact that under Finnish law it is prohibited to register ethnicity, it is not possible to provide official statistics on the number of Sami and non-Sami shareholders in different cooperatives.

4.12 The authors indicate that the Nellim herding group has aspired to separate from the Ivalo cooperative and set up its own. However, the State party indicates that the group has not managed to do so because no agreement has been reached within the Ivalo cooperative on how to delimit the territory of the Nellim group.

4.13 Essentially, the authors base their communication on the practice of traditional Sami reindeer herding. However, they do not indicate what they mean by this practice. It is not stated whether they are referring to a nomadic way of life, with herders moving from one place to another with the herd. Normally, the herders move in motorized vehicles and live in stationary buildings constructed for herding purposes.

4.14 Despite the various possible methods of reindeer herding — traditional, developing, mixed and modern — all reindeer herders share the same responsibility of keeping the number of their live reindeer within the prescribed maximum in order to ensure the sustainable production capacity of the cooperative's winter pasture. The reindeer population in Finland is dominated by female animals, in order to maximize the production of calves and the income of the herders. The high proportion of calves has made it possible to increase the number of reindeer. As a rule, the calves are slaughtered before the reindeer move on to winter pastures, which helps to avoid excessive consumption of these pastures. The purpose of these practices has been to improve the profitability of reindeer herding and thus to safeguard the livelihood of herders in the future.

4.15 According to the judgement of 11 February 2011, the Cooperative has Sami members who have fulfilled their slaughtering obligation. It thus appears that the present case does not concern unequal treatment between Sami and non-Sami herders but rather differences between members of the Cooperative. The judgement shows that there are very different opinions concerning reindeer herding methods.

4.16 The Ministry of Agriculture and Forestry has investigated the damage caused to reindeer by wild animals in the territory of the Ivalo cooperative and has found that in essence it does not differ from the damage elsewhere in the herding area or in the Sami Homeland. An incident took place in 2004 when a bear caused exceptionally severe damage during the calving period. However, this incident did not occur in the territory of Nellim but in the southern part of the Cooperative's territory. Under section 41 of the Hunting Act, it is possible to apply for an exceptional licence to kill a big wild animal that causes damage. The authors have not applied for an exceptional licence. In autumn, they have the opportunity to hunt bears in the reindeer herding territory within an established quota. During the period covered by the communication, the quota was not filled so quickly that the authors could not benefit from it. The competent authorities are not aware of any applications for licences to kill wild animals causing damage to reindeer in the territory of Nellim specifically.

4.17 The authors indicate that they carry out reindeer herding by the traditional method. According to the State party, this method should enable the herders to monitor the extent of the damage caused to reindeer by big wild animals much more efficiently than by the method of completely free pasturing. The Regional Council of Lapland has specifically proposed shepherding as one means of reducing damage caused to reindeer by wild animals.

4.18 With respect to the authors' claims under article 14, paragraph 1, of the Covenant, the State party indicates that the national courts, including the Supreme Administrative Court, thoroughly assessed the authors' complaint — also from the standpoint of the special rights of the Sami — taking into account international human rights obligations, especially those deriving from the Covenant. They reasoned their judgements appropriately and extensively. A fair trial, as set out in article 14, is guaranteed when the court in question, such as the Supreme Administrative Court in the present case, obtains all the necessary information for a thorough examination of the case. Fair trial guarantees ensure that all parties to legal proceedings have had the right to be heard.

4.19 The State party concludes that the facts of this case do not reveal any breach of articles 14 and 26; nor of article 27 read alone and in the light of article 1.

Author's comments on the State party's observations

5.1 On 18 June 2012, the authors submitted comments on the State party's observations. They reiterate that the judgement of the Supreme Administrative Court means the end of reindeer herding for the Nellim herding group, a fact that the State party does not dispute.

The complete loss of a whole reindeer herding group has a substantial impact and, accordingly, amounts to a denial of the right to enjoy the Sami culture. The pastures and the circumstances of the Nellim herding group and the Ivalo herding group are different — a fact that should be taken into consideration in decisions concerning, for instance, forced slaughtering. The law and its application lead to different and unequal treatment of these two groups.

5.2 In its observations, the State party does not consider the role of predators in the issue at hand. The authors disagree with the State party's assessment that the compensation provided to cover losses is sufficient and constitutes an effective manner of tackling the problems caused by exceptionally harmful animals. First of all, the loss of calves in Nellim is highly significant and takes place on roughly the same scale every year. Second, most of the losses are caused by bears that are part of a sizeable group living in the Paatsjoki river valley. Between the years 2000 and 2008, the survival rate of calves in the Paatsjoki reindeer herding cooperative was 52 per cent; that is to say, almost half of the calves born disappeared in the forest before counting time in autumn. Over the same period, the survival rates for the four authors calves were 53 per cent (Kari Alatorvinen), 56 per cent (Eero Paadar), 58 per cent (Kalevi Paadar) and 58 per cent (Veijo Paadar). In contrast to these rates, the survival rate for the Ivalo cooperative as a whole is 66 per cent.

5.3 Even though the difference in calf survival rates between the Nellim group and the Cooperative does not look significant at first glance, it is enough to make it impossible for the Nellim herders to fulfil slaughter quotas set by the Cooperative. The Cooperative's rate of 66 per cent includes the much lower rates of the Nellim group, which means that the difference is greater than it appears to be.

5.4 In 2011, the Regional Council of Lapland issued a report on predators and their impact on reindeer herding. According to the report, because of the current number of predators, economically profitable reindeer husbandry has collapsed in the area of Lapland most affected by predators. The bear population in that area increased from 170 in 1995 to between 370 and 420 in 2010 (i.e. by 120 to 150 per cent). The real numbers may even be higher, as there are fewer people to record sightings of predators in northern Finland than in other parts of the country. The report also points out that damage occurring in summer, for example that caused by bears, is extremely difficult both to locate and to document, owing to a rapid utilization of carcasses by predators and scavengers, as well as processes of decomposition.

5.5 In relation to the new compensation system that is set up to cover losses of calves without any documentation being required, introduced pursuant to the Game Animal Damages Act 105/2009, the Regional Council points out that the operationalization of this instrument has proved to be inadequate and problematic. The authors contend that this statement contradicts the observation by the State party that the new system has clearly improved the position of reindeer owners because compensation sums have risen while damage has decreased. The Regional Council's report states that the slight decrease in damage that has taken place since the peak year of 2007 is the result of falls in reindeer numbers due to predators. According to a scientific study quoted by the Regional Council, slaughter volumes collapsed at the same time in parts of the southern and eastern reindeer husbandry areas that are subject to the most severe damage from predators. There are now 27 cooperatives that suffer from predator problems, which is nearly half of all the reindeer herding cooperatives in the State party.

5.6 The compensation system for calf losses introduced by the Game Animal Damages Act was not yet in force when the Ivalo cooperative's decisions on slaughter that are referred to in the present communication were taken. However, even if the compensation system worked properly, the problem raised by the authors would not be solved. The herders losing significantly more calves to predators than the majority in the Cooperative

would still need to slaughter their productive base (i.e. their adult female reindeer) in order to fulfil their slaughter quota. Monetary compensation, even if substantial, could not replace the loss of livelihood. Furthermore, according to the report of the Regional Council, compensation for calf losses is in fact far from substantial and does not cover the real losses. For example, in 2011, in regard to the Paatsjoki cooperative, the compensated share of the total number of calves born was only 6 per cent, while the real annual loss of calves was close to 50 per cent.

5.7 The Ministry for Foreign Affairs requested the Sami Parliamentary Council to comment on the forced slaughter in the Nellim herding group. In its response, dated 23 March 2012, the Council states that the Reindeer Husbandry Act does not recognize Sami reindeer herding, despite the fact that, under section 17 (3) of the Constitution of Finland, the Sami people have a right to maintain and develop their own language and culture. Furthermore, the Government Bill on the Sami Parliament Act and the amendment to the Constitution state that reindeer herding, fishing and hunting are part of the Sami culture and traditional Sami livelihoods. The ruling of the Supreme Administrative Court focuses merely on the formal method of performing the reduction in the number of reindeer and fails to take a stand on the authors' main argument, namely that the Cooperative's decision on forced slaughtering violates article 27 of the Covenant. The authors have therefore been denied a fair trial, under article 14, paragraph 1, of the Covenant. The Sami Parliament is of the view that all Sami reindeer herders and members of their families must be able to practise reindeer husbandry in the Sami Homeland as part of their livelihood and culture and that inadequate national legislation obstructs or threatens this right. Through reindeer husbandry, Sami communities and the Sami language develop and remain viable. The authors' right to enjoy their own language is also violated by the Cooperative's decision on forced slaughter.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether or not the case is admissible under the Optional Protocol to the Covenant.

6.2 As required under article 5, paragraph 2 (a), of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee observes that the State party has expressed no objections regarding admissibility and that domestic remedies have been exhausted. As all admissibility criteria have been met, the Committee declares the communication admissible and proceeds to its examination on the merits.

Consideration of the merits

7.1 The Human Rights Committee has considered the communication in the light of all the information made available to it by the parties, as provided under article 5, paragraph 1, of the Optional Protocol.

7.2 The Committee notes the authors' claim that their right to a fair trial under article 14, paragraph 1, of the Covenant has been violated because the Supreme Administrative Court rejected their appeal without weighing their legal claims, arguments and facts, and that by requesting a statement from the Government, the Court subordinated itself to the Executive. The Committee considers that the materials made available to it do not suggest that the courts acted arbitrarily in evaluating the facts and evidence in the

authors' case or that the proceedings were flawed and amounted to a denial of justice. The Committee therefore does not find that the facts complained of constitute a violation of the authors' rights under article 14, paragraph 1, of the Covenant.

7.3 The authors claim to be victims of violations of articles 26 and 27 of the Covenant, in that the decisions on the forced slaughter of their reindeer taken in 2007 by the Ivalo Reindeer Herding Cooperative, in application of section 22 of the Reindeer Husbandry Act, had discriminatory effects on them. When deciding on the number of reindeer to be slaughtered in order to comply with the maximum permitted number of reindeer for the Cooperative and for each shareholder, the Cooperative did not take into consideration the authors' traditional Sami methods of herding or the fact that such methods involve the loss of greater numbers of calves. As a result, the reduction percentage imposed by the Cooperative on all stakeholders on the basis of their reindeer numbers at the beginning of the herding year had a negative impact on the authors, because at the time of slaughtering in autumn, their herds had been subjected to heavier losses than those of the other stakeholders, caused by predators.

7.4 The State party indicates that, according to the judgement of the Supreme Administrative Court, the Cooperative has Sami members who have fulfilled their slaughtering obligations. It thus appears that the present case does not concern unequal treatment between Sami and non-Sami herders, but rather differences between members of the Cooperative. The judgement shows that there are very different opinions concerning reindeer herding methods.

7.5 For the Committee, it is undisputed that the authors are members of a minority within the meaning of article 27 of the Covenant and, as such, have the right to enjoy their own culture. It is also undisputed that reindeer husbandry is an essential element of their culture. In this context, the Committee recalls its previous jurisprudence that economic activities may come within the ambit of article 27 if they are an essential element of the culture of an ethnic community. The Committee also recalls that, under article 27, members of minorities shall not be denied the right to enjoy their culture and that measures whose impact amounts to a denial of that right will not be compatible with the obligations under article 27.[4]

7.6 The Committee recalls paragraph 6.2 of general comment No. 23 (1994), which states:

> Although the rights protected under article 27 are individual rights, they depend in turn on the ability of the minority group to maintain its culture, language or religion. Accordingly, positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture … in community with the other members of the group. In this connection, it has to be observed that such positive measures must respect the provisions of articles 2 (1) and 26 of the Covenant both as regards the treatment between different minorities and the treatment between the persons belonging to them and the remaining part of the population. However, as long as those measures are aimed at correcting conditions which prevent or impair the enjoyment of the rights guaranteed under article 27, they may constitute a legitimate differentiation under the Covenant, provided that they are based on reasonable and objective criteria.

[4] Communication No. 511/1992, *Ilmari Länsman et al.* v. *Finland*, Views adopted on 26 October 1994, paras. 9.2 and 9.4; communication No. 671/1995, *Jouni E. Länsman et al.* v. *Finland*, Views adopted on 30 October 1996, para. 10.2; and communication No. 1023/2001, *Jouni Länsman et al.* v. *Finland*, Views adopted on 17 March 2005, para. 10.1.

7.7 In the present case, the authors claim that their calf losses are higher than those of the Ivalo group. However, the materials submitted to the Committee do not contain figures in that respect. The authors provide some figures on their reindeer numbers and the reduction imposed by the Cooperative with respect to 2010/11 but not with respect to 2007/08 and earlier years. It is also unclear what the progression was of the reductions imposed on their herds prior to 2007, how this compared to the reductions imposed on the other members of the Cooperative, and how, in concrete terms, they have come to a situation where all their reindeer have to be slaughtered. In the absence of information in that respect, the Committee is not in a position to conclude, given the limited evidence before it, that the impact of the Ivalo cooperative's reindeer reduction methods upon the authors was such as to amount to a denial of the authors' rights under articles 26 and 27. Despite this conclusion, the Committee deems it important to recall that the State party must bear in mind, when taking steps affecting rights under article 27, that although different activities in themselves may not constitute a violation of this article, such activities, taken together, may erode the rights of Sami people to enjoy their own culture.[5]

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it do not reveal a breach of articles 26 or 27 of the Covenant.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

[5] Communication No. 671/1995, op. cit., para. 10.7.

Appendix

Individual opinion of Committee members Walter Kälin, Víctor Manuel Rodríguez Rescia, Anja Seibert-Fohr and Yuval Shany (dissenting)

We are unable to agree with the view rendered by the Committee that the facts before it do not reveal a breach of article 27 of the Covenant. We regret that the decision of the majority fails to sufficiently take into account the facts of the case. According to undisputed facts submitted by the authors, the board of the Ivalo Reindeer Herding Cooperative decided that the authors — members of the Nellim herding group — must slaughter all of their reindeer starting on 26 September 2011. The decision to slaughter the authors' reindeer results from the cooperative system established by the State under the Reindeer Husbandry Act of 1990. Pursuant to section 21 (1) of that Act, the Ministry of Agriculture and Forestry determines the maximum number of live reindeer that a reindeer herding cooperative may keep in its territory. Under section 22 (1) of the Act, if the number of live reindeer of a cooperative or a reindeer owner exceeds a maximum number, the cooperative must decide on the reduction of the number of reindeer to the maximum allowable number. If the owner does not reduce the number of his or her reindeer in accordance with the decision of the cooperative, the chair of the cooperative may decide that the cooperative will carry out the reduction on behalf of the owner. In the present case, the authors' complaint against the Cooperative's decision to carry out the reduction on behalf of the owner on the basis of the slaughter plan adopted by the Cooperative for the 2007/08 herding year was dismissed by Rovaniemi Administrative Court and the Supreme Administrative Court. As a result, the authors now face the slaughter of all of their reindeer.

Reindeer husbandry is an essential element of the authors' culture and is thus protected by article 27 of the Covenant, pursuant to which persons belonging to ethnic minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture. The Committee's approach in the past has been to inquire whether interference by the State party in that husbandry is so substantial that the State party has failed to properly protect the authors' right to enjoy their culture.[a]

In the present case, the slaughter of all their reindeer constitutes a particularly grave interference with the authors' rights under the Covenant, since it would deprive them of their livelihood which is essential for their ability to continue to enjoy their traditional culture. We recognize that this interference does not result from a direct order by an organ of the State party to slaughter their herds but is a consequence of the decision taken by the Ivalo Reindeer Herding Cooperative. However, under article 27 of the Covenant, a State party is not only under an obligation to refrain from taking measures that amount to a denial of the right of members of a minority to enjoy their culture but is also obliged to take positive measures of protection "against the acts of other persons within the State party".[b] In this regard, we accept that it is reasonable and consistent with article 27 of the Covenant to allow herding cooperatives to impose slaughtering quotas on its members in order to achieve the purposes of the Reindeer Husbandry Act to restrict the number of reindeer for economic and ecological reasons and to secure the preservation and well-being of the Sami

[a] Communication No. 779/1997, *Äärelä and Näkkäläjärvi* v. *Finland*, Views adopted on 24 October 2001, para. 7.5.

[b] General comment No. 23 (1994), para. 6.1.

minority.[c] However, in cases of an apparent conflict between the legislation, which seems to protect the rights of the minority as a whole, and its application to a single member of that minority, the Committee has been guided by the consideration that restrictions upon the right of individual members of a minority must be shown not only to have a reasonable and objective justification in the particular circumstances of the case but also to be necessary for the continued viability and welfare of the minority as a whole.[d] The State party has not shown that slaughtering all of the authors' animals was necessary in order to achieve this goal, nor does the material in front of the Committee allow us to conclude that in the present case the objective of restricting the number of reindeer could not have been achieved otherwise, and that attaining this objective justifies the decision to slaughter all of the authors' reindeer despite its substantial impact on the right of the authors to enjoy their culture. For these reasons, we conclude that the Committee should have found the State party to be in violation of its obligations under article 27 of the Covenant.

[Done in English. Subsequently to be issued also in Arabic, Chinese, French, Russian and Spanish as part of the Committee's annual report to the General Assembly.]

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[c] See communication No. 197/1985, *Kitok* v. Sweden, Views adopted on 27 July 1988, para. 9.5.

[d] Ibid., para. 9.8; and communication No. 24/1977, *Lovelace* v. *Canada*, Views adopted on 30 July 1981, para. 16.